

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

JOHN LARRY SANDERS and SPECIALTY
FERTILIZER PRODUCTS, LLC,

Plaintiffs/Counterclaim
Defendants,

v.

THE MOSAIC COMPANY, CARGILL,
INC., and CARGILL FERTILIZER, INC.,

Defendants/Counterclaim
Plaintiffs.

Case No. 4:09-cv-00016-JTM

**STIPULATION FOR ENTRY OF JUDGMENT OF
NONINFRINGEMENT AND ORDER**

Plaintiffs and defendants hereby stipulate as follows:

1. On January 9, 2009, plaintiffs filed a patent infringement complaint against defendants in this Court, asserting that certain of defendants' products, including products sold under the brand names MicroEssentials SZ, MicroEssentials S-10, and MicroEssentials S-15 (hereafter "accused products"), infringed claims 3, 4, 7, 8, and 13-16 of U.S. Patent No. 6,210,459 (hereafter "'459 patent").

2. On March 4, 2009, defendants answered the complaint of plaintiffs, denying infringement and counterclaiming for non-infringement and invalidity of the '459 patent.

3. Plaintiffs and defendants have each demanded trial by jury and have stipulated to try this action before Magistrate Judge John T. Maughmer.

4. On March 17, 2010, the Court held a Markman hearing to construe disputed terms of claims 3, 4, 7, 8, and 13-16 of the '459 patent. The hearing was preceded by initial and reply briefs by plaintiffs and defendants and by evidentiary submissions by their respective experts.

5. Following oral delivery of its claims construction opinions in Court on March 17, 2010, and presentation of a proposed order by defendants, the Court issued its claim construction order on May 17, 2010.

6. The Court construed the claim terms "soil nutrient composition comprising a micronutrient" and a "composite comprising a micronutrient" to mean that the composition or composite must contain a minimum micronutrient percentage by weight of about five percent.

7. The Court further construed the terms "soil nutrient composition" and a "composite comprising a self-sustaining body" to be limited to non-stratified homogenous products.

8. The parties stipulate that if the Court's claim construction is applied to the accused products, defendants are entitled to summary judgment of noninfringement, because the accused products all contain substantially less than five percent micronutrients by weight. Because defendants also assert that they can demonstrate that the accused products are not non-stratified homogenous products, that component of the claim construction as well would, in that event, establish noninfringement.

9. Accordingly, summary judgment of noninfringement of the '459 patent shall be entered upon plaintiffs' Complaint, and plaintiffs' Complaint shall be dismissed with prejudice.

10. All claims in defendants' Counterclaim shall be dismissed without prejudice.

11. Accordingly, pursuant to Fed. R. Civ. P. 41 and 54(a), it is hereby ORDERED that, based upon the stipulation and motion of the parties, the Clerk shall immediately enter final judgment of non-infringement of claims 3, 4, 7, 8, and 13-16 of the '459 patent.

12. This Stipulation, Order, and Judgment shall not be considered a waiver of plaintiffs' right to appeal the Court's claim construction Order and the Judgment entered pursuant to Rule 54(a) and this Stipulation For Entry Of Judgment of Noninfringement and Order.

Respectfully Submitted,

Dated: May 20, 2010.

By /s Scott R. Brown

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Respectfully Submitted,

Dated: May 20, 2010.

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IT IS SO ORDERED.

Dated this _____ day of _____, 2010, at Kansas City, Missouri.

Magistrate Judge John T. Maughmer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of May, 2010, the foregoing was filed electronically with the Clerk of the Court via the CM/ECF system, which sent notification of such filing to the following:

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